

This is a case where the plaintiffs have arrested a ship. They have exercised their powers under the Admiralty Rules and thereby caused the defendants a complete stoppage of their ship's business. The defendants have challenged the plaintiffs' claim on the ground that the plaintiffs have no cause of action or even if they have it is premature. On the principles laid down in the abovementioned cases, the court can only look into the pleadings to decide whether there is a cause of action or not. In the circumstances it would have been incumbent on the plaintiffs to file their statement of claim to enable the court to make that decision. But they have not done so. The plaintiffs argue that as the appearance was a conditional one, there was no need for the plaintiffs to file a Statement of Claim as the appearances only become unconditional if the defendants do not file an application to set aside the writ. Here the defendants have filed an application to set aside the writ on the grounds that the plaintiffs have no cause of action and it is the duty of the plaintiffs to comply with Order 20 rule 3 of our Rules of the Supreme Court to enable the court to decide if there is a cause of action at all. For the court to hold otherwise would be to enable persons with no cause of action at all against others to have their ships arrested on a mere Writ of Summons and expose the defendants to all the inconvenience, loss or damage which will follow, especially where in case the plaintiffs were men of straw, the undertaking to compensate the defendants in damages will not be worth the paper it is written on.

Having only the Writ of Summons and its indorsement to look at with no Statement of Claim although the Rules of the Supreme Court requires a Statement of Claim to be filed, the court is in no position to say that the plaintiffs have a cause of action.

Therefore at this stage looking at only the pleadings in the file the court can only make a finding that the plaintiffs have not established a cause of action. For this reason the writ and all subsequent processes are set aside and the ship 'Beauty Orchid' released from arrest.

Order accordingly.

Solicitors: *Allen & Gledhill; Chong & Vello.*

ABDUL MOKHTI BIN HAJI AHMAD v. IDRIS BIN IBRAHIM

[O.C.J. (Arulanandom J.) February 23, 1976]

[Penang — Civil Suit No. 210 of 1973]

Negligence — Damages — Personal injuries suffered — Duty of drivers following a leading car.

The plaintiff claimed damages against the defendant for personal injuries suffered by him as a result of the defendant's negligent driving. The plaintiff alleged that on March 28, 1973 at about 12.30 a.m. he was riding his motor cycle along Telaga Ayer Road towards Bukit Mertajam with one Shahidi as his pillion rider. As he was proceeding along the road the defendant drove his motor taxi along the same road in the same direction and somewhere near the junction of Telaga Ayer Road and Jalan Chempah the defendant overtook the plaintiff without any warning and immediately stopped in front of him and thereby caused an accident. He claimed that there was insufficient time and space for him to avoid the defendant's car as a result of which the plaintiff collided into the rear of the defendant's taxi. The plaintiff alleged that at the material time, he was riding the motor cycle at about 20-25 m.p.h. The defendant on the other hand claimed that he did overtake some vehicles but after overtaking he had travelled a distance of four lamp-posts without overtaking any vehicle when a dog ran across his path from the right to the left and he jammed on his emergency brakes.

Held, dismissing the plaintiff's claim: (1) it was the duty of the driver following a leading car to drive in such a fashion so as to avoid accidents arising out of exigencies of the leading car. The duty was a continuing duty which exists independently of negligence of the leading driver;

(2) in the circumstances the court could not find evidence of any negligence on the part of the defendant.

Cases referred to:-

- (1) *Parkinson v. Liverpool Corpn.* [1950] 1 All E.R. 367.
- (2) *De Cotta v. Tan Hock Lee* [1972] 2 M.L.J. 173.

CIVIL SUIT.

Triptipal Singh for the plaintiff.

Peh Swee Chin for the defendant.

Arulanandom J.: In this case the plaintiff sues the defendant for damages for loss of vision and injuries suffered by him as a result of an accident caused by the negligent driving by the defendant of motor taxi No. PE 3789 on 28th day of March, 1973 at about 12.30 a.m. along Telaga Ayer Road, Butterworth, together with interest and costs.

According to the plaintiff, on March 28, 1973, at about 12.30 a.m. he was riding his motor cycle, PN 1234, and was proceeding along Telaga Ayer Road towards Bukit Mertajam with one Shahidi bin Yahya as his pillion rider. As he was proceeding along the road the defendant drove his motor taxi No. PE 3789 along the same road in the same direction and that somewhere near the junction of Telaga Ayer Road and Jalan Chempah the defendant overtook the plaintiff without any warning and immediately stopped in front of him and thereby caused an accident. He alleged he tried to avoid the defendant's car by swerving right but could not do so because there was neither sufficient time nor space to do so. He therefore collided into the rear of the defendant's taxi. He alleged that he was riding the motor cycle at about 20-25 m.p.h. He further suggested that the reason for the defendant overtaking and cutting in front of him and stopping suddenly was that some ladies were standing on the

left hand side of the road and the defendant most probably wanted to pick them up as passengers. His pillion rider Shahidi bin Yahya supported his story as far as the manner and cause of the accident were concerned. The defendant in his defence states that he did overtake some vehicles but after overtaking he had travelled a distance of four lamp-posts without overtaking any vehicle when a dog ran across his path from the right to the left and he jammed on his emergency brakes. He denied that there were any ladies standing by the side of the road or that he was intending to pick up any passengers when he stopped. He said that he had driven to Kuala Lumpur and back and he was on his way home at that time.

The question before the court is therefore whether the defendant cut across the path and stopped suddenly or whether he was driving straight along the road with the plaintiff following and jammed his brakes during an emergency. If the former is the case, then, the defendant is guilty of negligence. If the latter is the case, then, he need not necessarily be guilty of any negligence.

In considering whether the plaintiff's version is the correct version, one has to take into consideration a few factors. The pillion rider Shahidi bin Yahya made a report immediately after the accident and in that report there was no mention of any car cutting across the path of the plaintiff and stopping. All he says in his report is: "When we arrived at Simpang Chempa Lane, my friend collided into the rear of a motor taxi. I fell." In the report of the plaintiff which was made about one month after the accident the plaintiff says:

"When I arrived near Mengkuang Road, a motor taxi came from my rear and overtook my motor cycle and suddenly stopped in front of me. I applied my brakes but collided into the rear of the taxi and I fell down unconscious."

In his evidence in court he said the reference to Mengkuang Road was wrong and it was Jalan Chempah he was referring to.

From the sketch-plan it is to be observed that the road was 46' 9" wide which would mean it is quite a wide road. The front wheel of the motor cycle is lying about 1' from the centre white line while the rear wheel of the motor cycle is lying about 2' from the centre white line. The glass fragments from the motor cycle are somewhere between the front wheel and the back wheel. Considering the width of the road it would mean that the motor cycle collided into the rear of the taxi about 21-22' from the left hand side of the road as one approaches Permatang Pauh. If the taxi had overtaken the motor cycle and stopped suddenly to pick up passengers it is difficult to imagine the taxi coming to a stop about 22' from the side of the road. Taxis are well-known for cutting across the path of other vehicles and pulling up to pick up passengers but unfortunately in such cases they cut in front and pull up on the side of the road unless there is any obstruction at the side. In this case there seemed to be no obstruction and one cannot imagine a taxi pulling up and then stopping on this portion of the road. Secondly, if the plaintiff's version was correct, one would have expected the plaintiff's motor cycle to collide into the left side of the taxi or near

A the rear left of the taxi. From the damage to the taxi and from the evidence given by both the plaintiff and his witness it seems abundantly clear that the plaintiff knocked into the rear of the taxi when the taxi was facing the direction of Permatang Pauh and was not in any angle to the road. For a taxi to be in that position it should have travelled some distance after overtaking the plaintiff's motor cycle or any other vehicle before it was straightened out. So, of the two versions of the accident before the court, balancing the probabilities, the defendant's version is more probably the correct one.

The next question to consider is as to whether the defendant was negligent in putting on his brakes when he knew there were vehicles following. It has been held in *Parkinson v. Liverpool Corpn.*⁽¹⁾ that it is not negligence if one takes avoiding action when a dog runs across the path. It was also held in *De Cotta v. Tan Hock Lee*⁽²⁾ that there was a duty on drivers following a leading car to drive in such a fashion so as to avoid accidents rising out of exigencies of the leading car. It was further held that the duty was a continuing duty which exists independently of negligence of the leading driver. Furthermore, there were no brake-marks on the road to show that the taxi braked suddenly. In all the circumstances the court cannot find any evidence of negligence on the part of the defendant. The accident was caused most probably by the plaintiff following the taxi too closely and at a speed where he could not pull up when the taxi stopped in front of him. The sympathy of the court is unreservedly with the plaintiff who as a result of the accident is now blind but unfortunately for him there is no law of absolute liability in this country where a person can be awarded damages without establishing negligence on the part of another party.

For the reasons stated above, the suit is dismissed with costs.

Suit dismissed.

Solicitors: *Triptipal Singh & Co.; Peh Swee Chian & Co.*

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